IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.1138 of 2001.

Judgment reserved on: 9.1.2007

Date of decision: 11.1.2007

Meera Devi **….Petitioner**

Versus

State of H.P. and ors. **..Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1] *no*

For the Petitioner : **Mr. Lokender Thakur, Advocate.**

For the Respondents: **Mr. C.B. Singh, Dy. Advocate General.**

Dev Darshan Sud,J. (Oral)

The petitioner is aggrieved by the order passed by the Labour Court in Reference No.197 of 1998, instituted on 23.9.1998 and disposed of on 2.9.2000. The grievance of the petitioner before the Labour Court was that she had been working as a draughtsman in the Irrigation and Public Health Department, Ghumarwin. The petitioner has alleged that although she was performing the duties of a draughtsman, she was shown to have been engaged as a Beldar w.e.f. 29.9.1998. For all practical purposes and intent, the petitioner was performing the duties of draughtsman as such work was being assigned to

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***? yes

her regularly. Petitioner alleged that she was being paid wages of Beldar and was being shown on the muster roll as such. Petitioner claimed that she was fully qualified to have been engaged as Beldar. According to the allegations made, the services of the petitioner were dispensed with by the respondents on 21.6.2000. No order in writing was conveyed, but she was verbally told that there was no work. On 13.10.1999, the Labour Court framed the following issues:

1. Whether the termination of the petitioner is illegal in view of Section 25-F of the Industrial Disputes Act, 1947, if so, its effect?

2. Relief.

The learned Labour Court below held that the contention of the respondents that the petitioner had not worked for more than 240 days in a calendar year, was not correct.

On the second question as to whether the petitioner had abandoned the job, the learned Labour Court held (a) that the petitioner had not stepped into the witness box nor cross-examined the deponent of the affidavit filed on behalf of the respondent to prove her case; (b) from the totality of circumstances and considering the fact that there is no oral or documentary evidence on record, the Labour Court inferred that the petitioner had abandoned her services. While doing so,

the learned trial Court also considered the conduct of the petitioner that no representation etc. had been made.

I have heard the learned counsel for the parties. When the matter was being considered by the Labour Court, no oral or documentary evidence was led by the petitioner. She only filed her affidavit stating that her services had been terminated in violation of Section 25 of the Act. So far as the respondents are concerned, affidavit accompanied by the muster rolls, was filed. This is the only evidence on record.

Learned counsel for the petitioner submits that there is ample evidence on record to show that the petitioner had not abandoned her services at any point of time, rather, the respondents terminated her services illegally.

Learned Dy. Advocate General submits that the point of delay had been urged before the learned Labour Court and the inference that the dispute had not been kept alive was rightly arrived at by the learned Labour Court. He relied upon the decision in **Managaement, Sudamdih, Colliery of B.C.C.L.** v. **Their Workmen**, AIR 2006 SC 946 and the decision of a Division Bench of this Court in **Municipal Council Paonta Sahib** Vs. **State of Himachal Pradesh and others,** CWP No.398 of 2001, in support of his contention.

On going through the pleadings of the parties before the Labour Court, I find that there is no explanation as to why the petitioner had not approached

the authorities for having the reference made at an earlier point of time. According to the petitioner, her services were dispensed with on 20.6.1990 and the reference was made in the year 1998. There is no documentary evidence to show that the petitioner had been approaching the authorities or had made any representation against her purported illegal termination or had kept the dispute alive. The affidavit filed in support of her claim also does not reveal any such reason.

In view of the circumstances, I do not find it a fit case in which the Court should interfere under Article 226 of the Constitution of India. The two judgments cited by the learned Deputy Advocate General squarely cover the controversy involved in the present case. The writ petition is, therefore, dismissed. There shall be no order as to costs.

January 11, 2007 **(Dev Darshan Sud)**
(ss) **Judge.**